No. 06-499

In the

Supreme Court of the United States

STEVEN C. MORRISON,

Petitioner,

v.

BOARD OF LAW EXAMINERS OF NORTH CAROLINA, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether North Carolina may constitutionally restrict admission to the practice of law to applicants who either (1) pass North Carolina's bar examination or (2) have been licensed and have actively practiced for four of the last six years in a State having comity with North Carolina.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-9) is reported at 453 F.3d 190. The order denying rehearing is unreported (Pet. App. 27-28). The opinion of the district court (Pet. App. 10-26) is reported at 360 F. Supp. 2d 751.

JURISDICTION

The court of appeals entered its judgment on June 15, 2006 (Pet. App. 1-9) and rehearing was denied on July 12, 2006 (Pet. App. 27-28). The petition for certiorari was filed on October 5, 2006. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATEMENT

North Carolina General Statutes Section 84-24 provides that the North Carolina Board of Law Examiners "shall have full power and authority to make or cause to be made such examinations and investigations as may be deemed by it necessary to satisfy it that the applicants for admission to the bar possess the qualifications of character and general fitness requisite for an attorney and counselor-at-law." The principal means for admission to the bar is for an applicant to sit for the North Carolina Bar Examination. Pursuant to rules adopted by the Board, an applicant who is an attorney admitted to practice in another State may, in the discretion of the board, be licensed to practice without taking the North Carolina Bar Examination if:

> the applicant is duly licensed to practice law in a state, or territory of the United States, or the District of Columbia, having comity with North Carolina and that in such state, or territory of the United States, or the District of Columbia, while so licensed therein, the applicant has been for at least four out of the last six years, immediately preceding the filing of this application with the Secretary, actively and substantially engaged in the full-time practice of law.

Rule .0502(3) (Pet. App. 30). Petitioner brought the present action in the United States District Court for the Eastern District of North Carolina, contending that Rule .0502 violates

"the United States Constitution, Article IV, section 2 Privileges and Immunities Clause and the Fourteenth Amendment Equal Protection, Privileges and Immunities, and Right to Interstate Travel Clauses." (Complaint ¶¶ 28 & 33) Prior to filing his petition for certiorari, Petitioner has never contended that this Rule violates the Commerce Clause.

Petitioner graduated with honors from Indiana University School of Law in 1979. He was admitted to practice law in Indiana in 1979, Ohio in 1981, and California in 1985. In 1984, Petitioner moved to California. Petitioner moved to North Carolina in July 2000 and has been a resident of North Carolina since that date. On December 13, 2003, Petitioner filed an application with the Board of Law Examiners for admission by comity to the North Carolina bar. For the six years immediately prior to this application, Petitioner had practiced law in California and as an in-house counsel in North Carolina.

On January 20, 2004, the Board advised Petitioner that his application for admission by comity had not been accepted for consideration by the Board because he did not meet the requirements of Rule .0502. Specifically, the Board noted that Petitioner had not practiced law for four of the last six years in a State which grants admission without examination to attorneys licensed in North Carolina. On February 11, 2004, Petitioner filed the present action.

The district court granted summary judgment in favor of North Carolina with respect to Petitioner's constitutional attack on the comity requirement of Rule .0502(3) (i.e., the provision that allows a bar applicant to dispense with taking the bar if the applicant is a member of the bar of a State that grants comity to North Carolina). The district court concluded that

because Petitioner was a member of the bar of two States that have comity with North Carolina, Petitioner had suffered no injury as a result of North Carolina's comity requirement. (Pet. App. 14)

The district court, however, concluded that the provision of Rule .0502(3) that requires an applicant who is seeking comity admission to have practiced law for four of the last six years in a comity State ("the practice requirement") is unconstitutional. In analyzing the practice requirement, the district court recognized that Petitioner is a citizen of North Carolina and that the Privileges and Immunities Clause of Article IV, section 2 "affords him no protection" under the *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1873). (Pet. App. 16) The district court concluded that "Plaintiff, a North Carolinian by virtue of current residence, cannot assert [a claim] under Article IV, section 2." (Pet. App. 16) Given that Petitioner could not pursue a claim under Article IV, section 2, the district court proceeded to turn to Petitioner's other "novel" constitutional claims. (Pet. App. 16)

The district court concluded that *Saenz v. Roe,* 526 U.S. 489 (1999) recognized a "right to travel" and that, under the Fourteenth Amendment's Privileges or Immunities Clause, this right to travel cannot be impeded by treating persons differently based upon his or her prior residency. (Pet. App. 19) The district court recognized that "the text of [Rule .0502(3)] considers location of prior practice and not residence." (Pet. App. 20) Nevertheless, the district court judge, after he contacted several State bars and was unable to obtain any statistics to support his theory, concluded that it was "logical . . . to equate residency with place of practice." (Pet. App. 20) The district court proceeded to enter a declaratory

judgment that Rule .0502(3) violates Petitioner's right to travel and ordered the Board to extend to Petitioner admission to the North Carolina bar.[1] (Pet. App. 10-26)

A unanimous panel of the court of appeals reversed the district court. The panel rejected Petitioner's arguments that Rule .0502(3) violates the Privileges and Immunities Clause or the Equal Protection Clause:

> The Board contends that Rule .0502(3) is constitutional, arguing that Morrison has been treated equally with all North Carolina residents. North Carolina residents do not have an advantage over any other State's applicants for comity admission to the bar. Instead, the Board's rule treats differently persons actively and substantially practicing law in a State having comity from those practicing in a State that does not have comity, which is neither an equal protection violation nor a violation of the privileges and immunities clause, according to the Board. We agree.

(Pet. App. 5) The court of appeals concluded that, despite Petitioner's argument to the contrary, Rule .0502(3) does not contain a residency requirement. (Pet. App. 8) Accordingly, the rule treats Petitioner no differently than it treats North

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[1] The district court ordered that Petitioner be admitted to the North Carolina bar even though the requisite character and background checks had not yet been conducted by the Board. The district court subsequently stayed its order pending appeal.

Carolina citizens and residents. (Pet. App. 8) Because Petitioner "has been held to no more onerous requirements for admission to the North Carolina bar than any other citizen of North Carolina," the court of appeals concluded that Petitioner's constitutional challenge failed. (Pet. App. 9) The court of appeals voted unanimously to deny rehearing en banc.

REASONS FOR DENYING THE PETITION

Petitioner contends that the rules of the North Carolina State Board of Law Examiners with respect to admission to the State Bar violate the Commerce Clause. Petitioner, however, failed to make any argument based upon the Commerce Clause to either the district court or the court of appeals. Accordingly, the present petition constitutes a poor vehicle for resolving the question presented in the petition. Petitioner also asserts that rules of the Board of Law Examiners violate the Privileges and Immunities Clause and Equal Protection Clause. The court of appeals correctly rejected these arguments, and its decision does not conflict with any decision of this Court or of another court of appeals. Further review is not warranted.

I. THE PRINCIPAL ISSUE UPON WHICH THE PETITION IS BASED WAS NOT RAISED BELOW.

Petitioner's complaint does not include a cause of action based upon the Commerce Clause. In fact, the complaint contains no reference to the Commerce Clause. Rather, Petitioner's complaint is limited to an assertion that the rules of the Board of Law Examiners violate "the United States

Constitution, Article IV, section 2 Privileges and Immunities Clause and the Fourteenth Amendment Equal Protection, Privileges and Immunities, and Right to Interstate Travel Clauses." (Complaint ¶¶ 28 & 33) In the briefs he filed with the district court, Petitioner failed to rely on the Commerce Clause as a basis for attacking the applicable rules. The district court's opinion therefore fails to contain any reference to the Commerce Clause.

Petitioner also failed to make any argument to the court of appeals based upon the Commerce Clause. Judge Widener's decision makes clear that Petitioner's laundry list of alleged constitutional defects does not include the Commerce Clause:

> In this 42 U.S.C. § 1983 case, Steven C. Morrison, an attorney, filed suit alleging that the requirements by the Board of Bar Examiners for obtaining comity admission to practice law in North Carolina under its Rule .0502(3) violate the Privileges and Immunities Clause of Article IV, § 2; the Equal Protection Clause of the Fourteenth Amendment; and the Privileges or Immunities Clause of the Fourteenth Amendment.

(Pet. App. 2)

Petitioner seeks to rely upon the Commerce Clause for the first time in his petition for certiorari. This Court has repeatedly stated, however, that "'[w]here issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them.'" *Pennsylvania Dep't of Corrections v. Yeskey,* 524 U.S. 206, 212-13 (1998) (quoting

Adickes v. *S. H. Kress & Co.*, 398 U.S. 144, 147 n.2 (1970)). "Although in some instances we have allowed a respondent to defend a judgment on grounds other than those pressed or passed upon below, it is quite a different matter to allow a petitioner to assert new substantive arguments attacking, rather than defending, the judgment when those arguments were not pressed in the court whose opinion we are reviewing, or at least passed upon by it." *United States v. United Foods, Inc.*, 533 U.S. 405, 417 (2001) (citation omitted). In that Petitioner is seeking to attack the decision of the court of appeals based upon an argument not raised or presented to that court, the petition should be denied.

Only in "exceptional circumstances" will this Court consider an issue not raised below. *See Youakim v. Miller*, 425 U.S. 231, 234 (1976) (issuance of new program instruction by Department of Health, Education, and Welfare after the filing of the jurisdictional statement justified remanding to court of appeals to consider new constitutional issue presented). No such exceptional circumstances exist here. Petitioner had every opportunity to assert a claim based upon the Commerce Clause to the courts below but simply failed to pursue such a claim. By not raising the issue below, Petitioner has deprived this Court of both a factual record and the benefit of a reasoned opinion by the district court and court of appeals. The absence of a factual record is particularly significant given that Petitioner bases his Commerce Clause claim upon *Great Atlantic & Pacific Tea Co. v. Cottrell*, 424 U.S. 366 (1976). In *Great Atlantic & Pacific Tea Co.*, the Court rejected Mississippi's argument that the reciprocity provision at issue helped Mississippi ensure that milk standards of other States were equivalent to Mississippi's safety standards. The Court

found this argument to be frivolous because Mississippi, under the applicable statute, would accept out-of-state milk below the standards that Mississippi imposed upon milk produced in the State. Here, however, there has been no factual determination regarding the standards of the States that fall within the scope of North Carolina's comity provision. Moreover, Rule .0502 gives the Board of Law Examiners the discretion whether or not to admit an applicant. Thus, the Board has specific authority to turn away applicants who fall below North Carolina's standards.

In any event, Petitioner's Commerce Clause argument is without merit. The petition relies upon three Commerce Clause cases – *Great Atlantic & Pacific Tea Co. v. Cottrell,* 424 U.S. 366 (1976) (striking Mississippi statute that precluded importation of milk from States that did not accept Mississippi milk on a reciprocal basis), *Sporhase v. Nebraska,* 458 U.S. 941 (1982) (striking Nebraska statute that precluded taking ground water from Nebraska to another State unless that State reciprocated) and *New Energy Co. of Ind. v. Limbach,* 486 U.S. 269 (1988) (invalidating Ohio statute that granted a tax credit with respect to ethanol produced in Ohio or produced in a State that gave similar credits to Ohio ethanol). Each of those cases involve a State precluding or hindering the movement of tangible physical property across State lines in order to protect its own economic interests. Citing these three cases, Petitioner treats the practice of law like a fungible commodity. The practice of law, however, is not a commodity. Accordingly, state courts have traditionally had authority "to control who may be admitted to practice before them." *Leis v. Flynt,* 439 U.S. 438, 444 n.5 (1979) (*per curiam*). As this Court observed in *Goldfarb v. Virginia State Bar,* 421 U.S. 773, 792 (1975),

"[t]he interest of the States in regulating lawyers is especially great since lawyers are essential to the primary governmental function of administering justice, and have historically been 'officers of the courts.'"

Petitioner's argument for granting certiorari is that Rule .0502(3) has protectionist overtones like the statute at issue in *Great Atlantic & Pacific Tea Co.* Petitioner, however, fails to recognize that an attorney who has the requisite legal knowledge to practice in one jurisdiction will not necessarily have the requisite knowledge to practice in another jurisdiction. When a State such as California requires all bar applicants (regardless of whether the applicant is already admitted to the bar of another State) to sit for its bar exam, that State is effectively declaring that its state statutes, common law and rules of practice are unique. *See infra* pp. 17-18. Accordingly, North Carolina is not acting out of protectionist interests when it defers to California's pronouncement (i.e., the ability to practice law in California is not interchangeable with the ability to practice law in the other 49 States).

Petitioner cannot cite to a single judicial decision in which a comity rule relating to the licensing of attorneys has been held to violate the Commerce Clause. Given this paucity of authority, this Court should reject Petitioner's request to reach out and take this issue when the issue was neither presented nor ruled on below. *See United States v. Galletti,* 541 U.S. 114, 120 n.2 (2004); *Granfinanciera, S.A. v. Nordberg,* 492 U.S. 33, 38-39 (1989); *Kosak v. United States,* 465 U.S. 848, 850 n.3 (1984); *Delta Air Lines, Inc. v. August,* 450 U.S. 346, 362 (1981); *United States v. Lovasco,* 431 U.S. 783, 788 n.7 (1977).

II. THE FOURTH CIRCUIT CORRECTLY APPLIED WELL SETTLED LAW WITH RESPECT TO PETITIONER'S CLAIM UNDER THE PRIVILEGES AND IMMUNITIES CLAUSE.

Petitioner asserts that Rule .0502(3) violates the Privileges and Immunities Clause of Article IV, section 2 and the Fourteenth Amendment Privileges or Immunities Clause. Rule .0502(3), however, is not tied to residency nor does it discriminate based upon residency. Additionally, as Petitioner concedes, there is no conflict among the courts as to whether a comity requirement of the sort at issue here violates the Privileges and Immunities Clause. (Pet. 13) Accordingly, Petitioner's claims under Article IV, section 2 and the Fourteenth Amendment do not merit further review by this Court.

A. Article IV, Section 2

Article IV, section 2 of the Constitution provides that "[t]he citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." This provision "was designed to insure to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy." *Toomer v. Witsell*, 334 U.S. 385, 395 (1948). As both the district court and court of appeals below recognized, Petitioner, as a citizen and resident of North Carolina, may not assert a claim based upon Article IV, section 2. This clause provides "no security for the citizen of the State

in which [the privileges] were claimed." *Slaughter-House Cases,* 83 U.S. (16 Wall.) 36, 77 (1873).

In *United Bldg. & Constr. Trades Council v. Mayor of Camden,* 465 U.S. 208 (1984), for example, this Court was faced with a challenge to a Camden, New Jersey ordinance that required that at least 40 percent of the employees of contractors and subcontractors working on city construction projects be residents of the city. This Court allowed the action to go forward under Article IV, section 2 only because the appellant trade council included "members who reside outside New Jersey." *Id.* at 212 n.4. Citing the *Slaughter-House Cases,* this Court noted that "the disadvantaged New Jersey residents have no claim under the Privileges and Immunities Clause." 465 U.S. at 217. As a resident of North Carolina, Petitioner cannot attack Rule .0502(3) based upon Article IV, section 2.[2]

B. The Fourteenth Amendment Privileges or Immunities Clause

Section 1 of the Fourteenth Amendment states: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . ." In *Saenz v. Roe,* 526 U.S. 489 (1999), this Court held that the Fourteenth Amendment Privileges or Immunities Clause precludes a State from infringing upon the right to travel. This

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[2] In *Supreme Court of New Hampshire v. Piper,* 470 U.S. 274 (1985) and *Supreme Court of Virginia v. Friedman,* 487 U.S. 59 (1988), this Court recognized that Article IV, section 2 precludes a State from discriminating against bar applicants based upon residence. The rules at issue here, however, have no residency requirement and do not treat an applicant differently based upon the applicant's residency.

right to travel protects: (1) the right of a citizen of one State to enter and leave another State, (2) the right to be treated as a welcome visitor, rather than an unfriendly alien, when temporarily present in another State and (3) "for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State." *Id.* at 500. In *Saenz*, this Court held that a California statute that provided reduced welfare benefits for persons who resided in California for less than a year violated this right to travel and therefore could not stand under the Fourteenth Amendment.

Although Petitioner asserts that Rule .0502(3) should be struck based upon *Saenz*, the *Saenz* decision provides no support for his argument. In *Saenz*, the California statute was found to be unconstitutional because it violated "the right of the newly arrived citizen to the same privileges and immunities enjoyed by other citizens of the same State." *Id.* at 502. This Court recognized that "the right to travel embraces the citizen's right to be treated equally in her new State of residence." *Id.* at 505. As the court of appeals correctly concluded, Petitioner cannot show that as a new citizen and resident of North Carolina he has been treated any differently from other North Carolina citizens.

Rule .0502(3) does not disadvantage an out-of-state resident. Moreover, it does not give a long-standing North Carolina resident any advantage over new North Carolina residents. Both residents and non-residents are eligible for admission to the practice of law in North Carolina as a result of having been admitted to the bar of certain other specified States and actively practicing for four of the last six years in that State. This option is available equally to North Carolina residents and to non-residents, and both are bound by the same

requirements. All comity applicants – regardless of whether they have moved to North Carolina prior to applying or still reside in some other State – must prove the same active and substantial full-time practice in a comity State during the relevant six year period immediately preceding the date of their application. The Rule treats persons actively and substantially practicing law in a State that has comity differently from those practicing in a State that does not have comity. Residency, past or present, has nothing to do with that difference. Because Petitioner has been treated no differently from other North Carolina residents, his claim under the Fourteenth Amendment Privileges or Immunities Clause fails. *See Saenz,* 526 U.S. at 506-07; *Russell v. Hug*, 275 F.3d 812, 822 (9th Cir. 2002).

C. *Supreme Court of Virginia v. Friedman*

In discussing Article IV, section 2 and the Fourteenth Amendment, Petitioner asserts that the court of appeals' decision is inconsistent with this Court's holding in *Supreme Court of Virginia v. Friedman*, 487 U.S. 59 (1988). (Pet. 13-14) Specifically, Petitioner argues that the Fourth Circuit rested its decision on "the now clearly impermissible ground that the applicant could always take the bar exam." (Pet. 13) Petitioner then argues that the court of appeals' decision is therefore inconsistent with *Friedman*. In making this argument, however, Petitioner completely mischaracterizes the court of appeals' decision.

The only mention of the bar examination alternative comes in the final paragraph of the court of appeals' opinion. In this final paragraph, the court of appeals reiterates its holding that Petitioner "has been held to no more onerous

requirements for admission to the North Carolina bar than any citizen of North Carolina." (Pet. App. 9) The opinion observes that Rule .0502(3) is a "valid rule" and Petitioner has not met the requirements of this rule. The paragraph then concludes as follows: "Thus, [Petitioner] must seek an alternative method of gaining admission, such as taking the bar exam, as do all the other North Carolina lawyers similarly situated." (Pet. App. 9 (emphasis supplied))

Plainly, the court of appeals was reinforcing its holding that Petitioner was being treated the same as all other applicants irrespective of their residence. In this sentence, the court of appeals was merely recognizing that because Petitioner did not meet the requirements of Rule .0502(3), he would have to sit for the bar exam to gain admission to the North Carolina bar. The court of appeals' opinion is wholly consistent with decisions of this Court involving the Privileges and Immunities Clause.

III. THE FOURTH CIRCUIT CORRECTLY APPLIED WELL SETTLED LAW WITH RESPECT TO PETITIONER'S EQUAL PROTECTION CLAIM.

The law with respect to an equal protection claim is well settled by this Court's prior decisions. Petitioner's equal protection claim merely asserts that the court of appeals erred in its application of these settled principles to the facts before the court. The court of appeals correctly applied this Court's precedent. Accordingly, Petitioner's equal protection claim does not merit further review by this Court.

This Court has repeatedly held that unless a classification involves a fundamental right or discrimination along suspect lines, the rational basis test must be used in determining whether governmental action violates equal protection. *See, e.g., Central State Univ. v. American Ass'n of Univ. Professors,* 526 U.S. 124, 127-28 (1999). The courts of appeals have uniformly held that the right to practice law is not a fundamental right for purposes of equal protection analysis. *See, e.g., Tolchin v. Supreme Court of New Jersey,* 111 F.3d 1099, 1113-15 (3d Cir.), *cert. denied,* 522 U.S. 977 (1997); *Scariano v. Justices of the Supreme Court,* 38 F.3d 920, 924 (7th Cir. 1994), *cert. denied,* 515 U.S. 1144 (1995); *Schumacher v. Nix,* 965 F.2d 1262, 1268 n.9 (3d Cir. 1992); *Edelstein v. Wilentz,* 812 F.2d 128, 132 (3d Cir. 1987); *Jones v. Bd. of Comm'rs,* 737 F.2d 996, 1000-01 (11th Cir. 1984); *see also Leis v. Flynt,* 439 U.S. 438, 443 (1979) (*per curiam*) (Constitution does not "require that because a lawyer has been admitted to the bar of one State, he or she must be allowed to practice in another"). Moreover, Rule .0502(3) does not discriminate based upon a suspect classification. Accordingly, the court of appeals properly analyzed Petitioner's equal protection claim under the rational basis test.[3] *See Nordgren v.*

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[3] Petitioner argues at length that a rational basis test is not appropriate because Rule .0502(3) was adopted by a state board rather than the North Carolina General Assembly. (Pet. 18-19) Petitioner's argument is frivolous. *See Jones v. N.C. Prisoners' Labor Union, Inc.,* 433 U.S. 119 (1977) (applying rational basis review to regulation adopted by North Carolina Department of Correction). Additionally, Petitioner argues that his challenge to the Rule is entitled to heightened scrutiny because he has asserted a claim under the Privileges and Immunities Clause. (Pet. 16) As

Hafter, 789 F.2d 334, 338-40 (5th Cir.), *cert. denied*, 479 U.S. 850 (1986); *Lupert v. California State Bar*, 761 F.2d 1325, 1327 n.2 (9th Cir.), *cert. denied*, 474 U.S. 916 (1985); *Salibra v. Supreme Court of Ohio*, 730 F.2d 1059, 1062-63 (6th Cir.), *cert. denied*, 469 U.S. 917 (1984).

Under the rational basis standard, a classification "'must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.'" *Heller v. Doe*, 509 U.S. 312, 320 (1993) (quoting *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 313 (1993)). "[W]hen conducting rational basis review 'we will not overturn such [government action] unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the [government's] actions were irrational.'" *Kimel v. Florida Bd. of Regents*, 528 U.S. 62, 84 (2000) (quoting *Vance v. Bradley*, 440 U.S. 93, 97 (1979)). Rational basis review "'is not a license for courts to judge the wisdom, fairness, or logic of legislative choices.'" *Heller*, 509 U.S. at 319 (quoting *Beach Communications*, 508 U.S. at 313). Accordingly, a "classification neither involving fundamental rights nor proceeding along suspect lines is accorded a strong presumption of validity." *Heller*, 509 U.S. at 319. Rule .0502(3) is rationally related to the interest of the State of North Carolina in ensuring that persons who are licensed by the State to practice law are competent to do so.

Numerous States, including California, require that all applicants must sit for the bar exam, regardless of whether the

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set out above, his claim under the Privileges and Immunities Clause is without merit.

applicant has previously passed the bar exam of another State. Such a requirement is clearly constitutional. When California refuses to admit practicing attorneys from another State unless that attorney sits for the California bar exam, California is effectively declaring that (1) its statutory code, common law and rules of practice are unique from that of other States and (2) knowledge of the law of another State does not necessarily render that attorney qualified to practice law in California. Thus, California has essentially declared that the knowledge base necessary to competently practice law in California is different from the knowledge base necessary to practice law in the other 49 States. It is rational and reasonable for the Board to rely upon the conclusion of California lawmakers that California law is unique from the law of the other 49 States. The Equal Protection Clause does not prohibit or preclude the Board from deferring to California as to whether the legal knowledge necessary to practice law in California is interchangeable with the legal knowledge necessary to practice law in other States of the Union.

Knowledge of the law is not a fungible commodity. The law of each of our 50 States is different. Certain States have appropriately concluded that their state laws are so unique that attorneys who practice in that State are not simply interchangeable with attorneys of another State. When a State such as California comes to such a conclusion, other States are entitled to defer to that determination. Such deference is not so arbitrary and irrational as to violate the Equal Protection Clause.

Additionally, Rule .0502(3) serves the legitimate state interest of facilitating the ability of attorneys to readily move their practice to another State and to represent clients across

state borders. A state rule that facilitates the ability of attorneys to move throughout the country, provided the rule does not discriminate based upon residency, serves a legitimate purpose. Petitioner argues that Rule .0502(3) may, in fact, be counterproductive to this goal because it may encourage States with broad admission policies to copy North Carolina's approach. (Pet. 19) In so arguing, Petitioner ignores the admonition of this Court that the Equal Protection Clause does not allow "the judiciary [to] sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines." *New Orleans v. Dukes,* 427 U.S. 297, 303 (1976). The court of appeals correctly rejected Petitioner's equal protection claim.

CONCLUSION

The petition for writ of certiorari should be denied.
Respectfully submitted.

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